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DISTRICT COURT  
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2010 MAY 3 PM 3 39  
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Attorneys for Plaintiffs

W-10-79-BLG-RFC-CSO  
MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

JUDITH HERZOG,

Plaintiff,

vs.

ESIS, INC.

Defendant.

Cause No.

Judge: RUSSELL C. FAGG

COMPLAINT

(JURY TRIAL DEMANDED)

170/33408

IMAGED

Plaintiff's complaint states:

1. ESIS Inc. is an insurance services and claims management company licensed to do business in the state of Montana and subject to Montana law prohibiting unfair claim settlement practices.

2. At all times relevant to this Complaint, ESIS was responsible for providing claim management, handling, adjustment and settlement services to PSC Industrial Outsourcing, LP, and PSC Industrial, Inc.

3. On February 8, 2008, the semi-tractor-trailer owned by PSC Industrial Outsourcing, LP, PSC Industrial, Inc., or both, and being driven negligently by its employee/driver Eugene Edward Isakson, failed to yield the right-of-way to oncoming traffic when entering onto Highway 310 from a private road near the

M

1 Cenex Refinery in Laurel, Montana, in violation of Montana statutes including  
2 specifically Section 61-8-341, M.C.A. and Section 61-8-343, M.C.A. See Exhibit 1,  
3 attached.

4 4. As a direct result of Isakson's carelessness and violations of Montana  
5 law, an immediate and violent collision occurred with a 2002 Dodge 4-door R1500  
6 pickup truck which had the right of way on Highway 310, and in which Judith  
7 Herzog was riding as a passenger, causing plaintiff to suffer personal injuries,  
8 physical pain, shock, fright, fear, traumatic stress, medical expense and lost wages.  
9

10 5. Immediately following this collision, and at all times relevant to this  
11 civil action, PSC knew and admitted that the February 8, 2008, wreck was caused by  
12 carelessness of its semi-tractor driver in failing to make sure the right of way was  
13 clear. See Exhibit 2, attached.

14 6. Defendant ESIS was solely responsible for handling plaintiff's claim  
15 against PSC Industrial Outsourcing, LP, PSC Industrial, Inc. and Eugene Isakson  
16 arising out of this clear liability motor vehicle collision.

17 7. Plaintiff promptly provided ESIS with copies of her bills for medical  
18 care necessitated by this collision for payment, but these bills were ignored by ESIS.  
19

20 8. On May 28, 2008, plaintiff wrote to ESIS inquiring whether it intended  
21 to advance pay her medical bills, which ESIS knew it was required to do by Montana  
22 law. See Exhibit 3, attached.

23 9. The following day, May 29, 2008, ESIS acknowledged its delays in  
24 handling plaintiff's claim. ESIS further confirmed in writing its intentional refusal to  
25 pay plaintiff's medical bills as was required by law. See Exhibit 4, attached.

1           10.    Thereafter, on June 17, 2008, ESIS confirmed in a letter addressed "To  
2   Whom It May Concern," its refusal to pay plaintiff's medical expenses as required by  
3   Montana law, stating its intention to force plaintiff to settle her claim in full in order  
4   to get her medical bills paid. See Exhibit 5, attached.

5           11.    In total disregard of Montana law, ESIS attempted to take advantage of  
6   the economic leverage of plaintiff's unpaid medical bills and her lost time at work to  
7   force plaintiff to accept an unreasonably low offer of full settlement.

8           12.    More than a full year passed following the February 8, 2008, collision,  
9   during which ESIS refused to honor its duty to pay in advance of settlement all of  
10   plaintiff's claims for medical expense and compensate plaintiff for lost time at work,  
11   ignored its obligation to conduct a reasonable investigation based upon all available  
12   information and neglected to attempt to effectuate a prompt, fair and equitable  
13   settlement of plaintiff's claim.

14           13.    Defendant's intentional and multiple violations of Montana law caused  
15   harm to plaintiff in the form of frustration, anger, humiliation, embarrassment,  
16   chagrin, disappointment and worry and by forcing her to hire an attorney to file and  
17   prosecute a civil action.

18           14.    In the civil action filed on plaintiff's behalf, defendant permitted  
19   counsel it retained to deny liability, knowing full well that PSC was at fault for the  
20   February 8, 2008, collision in which plaintiff was injured. As a result, and in order to  
21   get ESIS to make a settlement offer that was not unreasonably low, plaintiff was  
22   required to conduct discovery necessary to force PSC to produce documents and  
23   admit facts proving that ESIS knew all along the February 8, 2008, collision was  
24   25

1 caused by the carelessness of its semi-tractor driver in failing to yield the right of  
2 way.

3 15. At all times relevant to this Complaint, ESIS had the responsibility to  
4 handle claims arising in accordance with standards applicable to the insurance  
5 industry and made mandatory by Montana's Unfair Trade Practices Act, Section 33-  
6 18-201, M.C.A., all of which are intended as a matter of public policy to result in the  
7 expeditious and fair resolution of liability claims in which liability is reasonably  
8 clear, without the necessity for hiring legal counsel and filing a civil cause of action.  
9 Pursuant to the MUTPA, it is unlawful and a prohibited practice to:  
10

11 (a) misrepresent pertinent facts in handling claims presented under  
12 its insurance policies;

13 (b) misrepresent insurance policy provisions relating to coverages at  
14 issue in handling claims presented under its insurance policies;

15 (c) refuse to pay claims under its insurance policies without  
16 conducting a reasonable investigation based upon all available information;

17 (d) attempt to delegate or shift its duty to conduct a fair and full  
18 investigation to its insured;

19 (e) fail to document facts pertinent to its handling of claims within a  
20 claim file;

21 (f) deny claims based upon speculation, surmise or guesswork;

22 (g) fail to attempt to bring about a prompt, fair and equitable  
23 settlement of claims where the reasonably available documentation revealed liability  
24 for such claim was reasonably clear.  
25

1           16.     ESIS violated subparagraphs 1, 4, 6 and 13 of the Montana Unfair Claim  
2 Settlement Practices Act, Section 33-18-201, M.C.A., causing Plaintiff to suffer injury,  
3 damage and loss, including emotional distress, giving rise to a general tort action in  
4 favor of Plaintiff pursuant to Section 33-18-242, M.C.A.

5           17.     ESIS purposely refrained from undertaking a reasonable investigation  
6 based upon all available information, intentionally refused to make advance  
7 payments for plaintiff's medical expenses and lost time at work and neglected to  
8 attempt to effectuate a prompt, fair and equitable settlement of Plaintiff's claims, all  
9 for the purpose of exerting economic leverage against plaintiff and enhancing its  
10 profit at plaintiff's expense and gaining unfair advantage over plaintiff in conscious  
11 disregard of, or indifference to, the certainty that Plaintiff would suffer injury as a  
12 result. This conduct on the part of ESIS meets the standards of actual malice, and  
13 justifies assessment of punitive damages against ESIS in accordance with the strict  
14 procedural protections afforded by Montana law.

15           WHEREFORE, plaintiff respectfully requests prays for judgment:

16           1.     For damages sufficient to compensate Plaintiff for all her damages and  
17 loss herein, including emotional distress, attorney fees and expenses;  
18

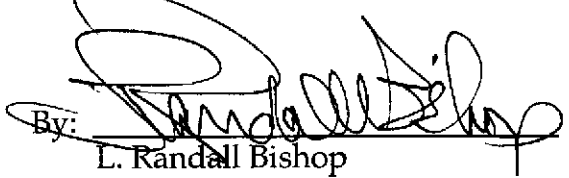
19           2.     For a separate award of attorney fees and costs as permitted by  
20 Montana law;  
21

22           3.     For punitive damages against ESIS sufficient to make an example of its  
23 wrongful conduct toward plaintiff, and deter similar wrongful acts on the part of  
24 ESIS and all other for-profit insurance claim handlers now and in the future; and  
25

1           4.     For such other and further relief as the Court may deem appropriate  
2 under the circumstances.

3           DATED this 3<sup>rd</sup> day of May, 2010.

JARUSSI & BISHOP

By:   
L. Randall Bishop

10                   **PLAINTIFF DEMANDS TRIAL BY JURY**